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[A.M. No. RTJ-02-1691 (Formerly A.M. OCA IPI No. 99-808-RTJ), November 19, 2004]

THE OFFICERS AND MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES, BAGUIO-BENGUET CHAPTER, COMPLAINANTS, VS. JUDGE FERNANDO VIL PAMINTUAN, RESPONDENT.

R E S O L U T I O N

SANDOVAL-GUTIERREZ, J.:

On January 16, 2004, we rendered a Decision suspending for a period of one (1) year Judge Fernando Vil Pamintuan, Presiding Judge of the Regional Trial Court (RTC), Branch 3, Baguio City, herein respondent. He was charged by the above-named complainants with **(1)** gross ignorance of the law; **(2)** violation of the constitutional rights of the accused; **(3)** arrogance, oppressive conduct, and violations of the Code of Judicial Conduct; and **(4)** impropriety.

For our resolution is complainants' motion for reconsideration of our Decision praying that the penalty of one (1) year suspension we imposed upon respondent judge be modified. Instead, we should dismiss him from the service with forfeiture of all benefits and with prejudice to any re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.

The instant motion for reconsideration lacks merit.

Firstly, the assailed Decision was a product of our extensive and serious deliberation. We carefully evaluated respondent's infractions before imposing upon him the penalty of one (1) year suspension from the service. To reconsider our Decision *sans* new and compelling reason is plain flip-flopping which will result in serious injustice to respondent. Even complainants' motion for reconsideration provides no sufficient justification. **It does not raise new matters or issues demanding new judicial determination.** In other words, it is but a reiteration of reasons and arguments previously set forth in complainants' pleadings which we already determined and resolved before we rendered the Decision sought to be reconsidered. The facts, the issues, and the law contained in our Decision having remained unchanged, we find no reason why we should reconsider it.

Secondly, the cases relied upon by complainants in pointing out that the penalty imposed upon respondent is not commensurate to his offenses are based on entirely different factual settings. Complainants cited the following cases:

(1) *Re: Release by Judge Manuel T. Muro, RTC, Br. 54, Manila, of an Accused in a Non-Bailable Offense*,[1]

(2)

Dizon vs. Calimag,[2]

(3) *Guray vs. Bautista*,[3]

(4) *Office of the Court Administrator vs. Sanchez*,[4]

(5) *Mamba vs. Garcia*,[5]

(6) *In Re: An Undated Letter with the Heading "Expose" of a Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III*,[6]

(7) *Agpalasin vs. Agcaoili*,[7]

(8) *Magarang vs. Jardin, Sr.*,[8]

(9) *Castaños vs. Escaño, Jr.*,[9]

(10) *State Prosecutors vs. Muro*,[10]

(11) *Chin vs. Gustilo*,[11]

(12) *Francisco vs. Springael*,[12]

(13) *Lantaco, Sr. vs. Judge Llamas*,[13] and

(14) *Carreon vs. Flores*.[14]

The common thread in the above cases, which justifies the imposition of the supreme penalty of dismissal from the service upon the erring judges, is the fact that the acts committed by respondents therein involve **malice, wrongful motives, corrupt intentions or moral depravity**. Apparently, of the thirteen (13) cases cited, eight (8) were either for gross misconduct, serious misconduct or corruption. Five (5) cases were for gross ignorance of the law. In two (2) of these cases, only **reprimand** and **fine** were imposed upon respondents. In the remaining three (3), respondents were penalized with dismissal from the service because of facts peculiar to said cases, definitely not similar to the facts in the instant case. In *Castaños vs. Escaño*,[15] in addition to gross ignorance of the law, respondent was also found guilty of **grave abuse of authority** for using contempt as a retaliatory measure. In *Lantaco, Sr. vs. Judge Llamas*,[16] respondent judge repeatedly ignored our directive for him to file comment. And in *State Prosecutors vs. Muro*, [17] though respondent judge was initially dismissed, he was **reinstated** upon his filing of a motion for reconsideration. It bears reiterating that in all these cases, **malice, fraud, dishonesty, corruption or wrongful intention are present**. Here, respondent's questioned actuations are not tainted by any of these incidents. Hence, we can not consider the above cited cases as precedents applicable to his case.

Thirdly, it is not true that **respondent has not shown remorse or repentance**. In his motion for reconsideration, he manifested his immediate compliance with our Decision dated January 16, 2004 on the premise that the "**Supreme Court has**

spoken." A truth, commonly accepted in civilized institutions, is that acceptance of punishment often mitigates the gravity of a violation of a duty. The ultimate commitment of one's fate to legal process means that under an obligation of consent or a duty to support just institutions, one's breach is also substantially lessened.[18] Although respondent judge moved for the reduction of his penalty, the same was premised on his length of service in the judiciary. His motion merely appealed to our "compassion and understanding," thus, showing humility in his moral judgment.

And *fourthly*, a more thorough review of the facts as well as the applicable jurisprudence shows that the penalty of dismissal from the service is disproportionate to respondent judge's infractions.

I

The first charge of gross ignorance of the law must fail. *First*, there exists a judicial remedy sufficient to correct respondent judge's alleged mistakes in the imposition of the Indeterminate Sentence Law. And *second*, there is no evidence to show that he was moved by bad faith, malice, dishonesty or corruption in imposing the penalties.

Settled is the rule that the filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists.[19] The law provides ample judicial remedies against errors or irregularities committed by the trial court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (i.e., error in application of procedural or substantive law or in appreciation or admission of evidence) include a **motion for reconsideration,** a **motion for new trial,** and **appeal**. On the other hand, the extraordinary remedies against error or irregularities which may be deemed extraordinary in character (i.e., whimsical, capricious, despotic exercise of power or neglect of duty, etc.) are **the special civil actions of certiorari, prohibition** or **mandamus**, or a **motion for inhibition**, or a **petition for change of venue**, as the case may be.[20]

Today, the established policy is that disciplinary proceedings against judges are not complementary or suppletory of, nor a substitute for these judicial remedies. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are **pre-requisites** for the taking of other measures against the judges concerned, whether of civil, **administrative**, or criminal nature. **It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.**[21]

In the present administrative case, respondent judge is found to have repeatedly misapplied the Indeterminate Sentence Law in seventeen (17) cases.[22]

The records, however, show that of these seventeen (17) cases, twelve (12)[23] are pending appeal in the Appellate Court. One (1)[24] is subject of a motion for reconsideration before respondent judge. Two (2)[25] were decided by him on the

basis of a plea of guilty to a lesser offense by both accused. And in **one (1) case**, [26] **we affirmed his Decision in our Resolution dated October 9, 2000**.

With the foregoing circumstances, it is therefore both **improper** and **premature** to hold respondent judge guilty of gross ignorance of the law. Following established doctrine, **the pendency of the appeals is sufficient cause for the dismissal of the administrative complaint against respondent judge**.[27] The rationale is that if subsequent developments prove respondent judge's challenged act to be correct, there would be no occasion to proceed against him after all. In *Flores vs. Abesamis*,[28] we held:

> "Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and disposition they may make in the performance of their duties and functions; and **it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, prosecution of a judge can be had only if '*there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and also evidence of malice or bad faith, ignorance of inexcusable negligence, on the part of the judge in rendering said judgment or order*' or under the stringent circumstances set out in Article 32 of the Civil Code**. . . ." (Underscoring supplied)

To declare that respondent judge misapplied the Indeterminate Sentence Law to criminal cases on appeal will only result to undesirable consequences, foremost of which is the existence of conflicting decisions. **The danger is heightened by the fact that the complainants in this administrative case are not the counsel of the accused in most of the cases mentioned but mere members of the Integrated Bar of the Philippines who only sorted out respondent judge's Decisions and on the basis thereof, concluded that he erred in the application of the Indeterminate Sentence Law.**[29] **They neither looked at the records of the cases nor consulted the parties concerned. As a matter of fact, during cross-examination, they admitted that they do not know personally the facts of the cases.**

It bears reiterating that to constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, **he must be moved by bad faith, fraud, dishonesty or corruption**.[30] **Here, the administrative complaint does not even assert that in imposing the penalties, respondent judge was so motivated. In fact, complainants failed to present positive evidence to show that he was prompted by malice or corrupt motive in imposing the assailed penalties. Even the records, specifically the transcript of stenographic notes, reveal nothing of that sort.**

In *Guillermo vs. Judge Reyes, Jr.*,[31] we ruled that "**good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses**

in which a judge charged with ignorance of the law can find refuge." In this case, reprimand was considered an appropriate penalty. In *People vs. Serrano, Sr.*, [32] respondent Judge Pepe P. Domael allowed an appeal from a judgment of acquittal. Although the accused did not object to the appeal interposed by the prosecution, we held that respondent Judge Domael should have known that granting such appeal would constitute double jeopardy. **However, since the acts in question were not shown to be tainted with bad faith, fraud, or malice, they were not considered as so gross to warrant the dismissal of respondent judge from the service.**

Indeed, the fact that herein respondent judge misapplied the Indeterminate Sentence Law, the same merely constitutes an error of judgment. **To reiterate, a judicial determination or mistake based merely on errors of judgment, and without corrupt or improper motives, will not supply a ground for removal, and this is true although such errors are numerous.**[33]

II

Anent the second charge of violation of the Constitutional rights of the accused, complainants mentioned two cases, i.e., *People vs. Baniqued*[34] and *Surla vs. Dimla*,[35] wherein respondent judge failed to decide pending motions within the prescribed period.

In *People vs. Baniqued*,[36] respondent judge, according to complainants, took more than one (1) year to decide the prosecution's motion for the preventive suspension of Ceferino Baniqued. At first glance, the delay seems to be unreasonable and attributable to respondent judge. However, a more probing inquiry on the matter shows that the delay was due to the maneuverings of Atty. Lauro C. Gacayan, Baniqued's own counsel and one of the complainants herein.

The records show that as early as December 2, 1997, former Presiding Judge Ruben Costales had deemed submitted for resolution the prosecution's motion for preventive suspension. Notwithstanding so, Atty. Gacayan filed several pleadings[37] insisting that it was still "**premature to consider the incident submitted for resolution because the mandatory 'pre-suspension hearing' has not yet been terminated**." On August 18, 1998, the motion for preventive suspension was again considered submitted for resolution, this time by respondent judge. Pending resolution, Atty. Gacayan filed a demurrer to evidence praying that the case of *People vs. Baniqued*[38] be dismissed for lack of evidence to support the conviction of the accused.[39] This was followed by a supplement to the demurrer to evidence.[40]

Obviously, the delay in the resolution of the prosecution's motion was, in the main, due to Atty. Gacayan's persistence that a pre-suspension hearing be conducted. Not only did he file one pleading after another, he also filed a demurrer to evidence. This only complicated the matters before respondent judge. Naturally, if the demurrer to evidence is found to be meritorious, then the necessary consequence is the dismissal of the motion for preventive suspension on the ground that it has become moot and academic.